IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH, JAIPUR.

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J U D G M E N T

Maksood Vs. Sajauddin

S.B.CIVIL FIRST APPEAL NO. NO.90/1988 AGAINST THE JUDGMENT DATED 27.5.88 PASSED BY THE LEARNED ADDL. DISTRICT JUDGE, SIKAR IN CIVIL SUIT NO. 37/1987 (11/83).

Date of Judgment : October 06, 2006.

P R E S E N T

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr. AK Bajpai, for the appellant.
Mr. DP Pujari, for the respondent.

BY THE COURT:

1. This appeal is directed against the Judgment dated 27.5.1988 passed by learned Addl. District Judge, Sikar dismissing the suit for recovery of sum of Rs.40,000/- on the ground that the plaintiff has failed to prove the promissory note and receipt of alleged loan of Rs.40,000/- given by the plaintiff to the defendant Sajauddin.

2. The learned trial court while deciding issue no.1 in

para no.8 of the Judgment has clearly discussed the relevant evidence and held that the witnesses produced by the plaintiff in support of his case to prove the documents Ex.1 and 2 namely Gangadhar and attesting witnesses Safiq Ahmed and Samim Akhtar all have failed to prove the said documents for the alleged loan of Rs.40,000/- and, therefore, in the absence of documentary evidence having been proved by the plaintiff, decree for recovery for said sum could not be granted.

3. Learned counsel for the appellant contends that the learned trial court ought to have compared the signatures in exercise of powers given under Sec.73 of the India Evidence Act and should have arrived at the relevant finding on the basis of such documents Ex.1 & 2.

4. Learned counsel for the respondent submits that since the witnesses produced by the plaintiff have failed to prove the documents in question, the learned trial court cannot be said to have committed any error in arriving at the finding and it is not mandatory for the learned trial court to invoke power under Sec.73 of the Act which is merely to facilitate the appreciation of evidence where the learned trial court thinks it appropriate it could do so, while invoking the power under Sec.73 of the Act.

5. Having considered the rival submissions and upon perusal of the impugned Judgment, this court is of the view that the plaintiff-appellant has failed to prove the relevant documents Ex.1 and 2 on the basis of which the suit for recovery of the said sum of Rs.40,000/- was filed by the plaintiff. It cannot be said that it is necessary for the learned trial court in all such cases to invoke this power under Sec.73 of the Act to compare the signatures and arrive at the findings in favour of the plaintiff even though the witnesses produced by the plaintiff in such cases have failed to prove the documents. The power under Sec.73 are only of residuary nature and they are just for assisting the court in appreciation of evidence. Therefore, I find no illegality and infirmity in the impugned findings of learned trial court. Consequently the suit was rightly dismissed by the learned trial court.

6. This appeal is devoid of merit and same is hereby dismissed.

(Dr.VINEET KOTHARI)J.

s.rawat/-